

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

**MOTION TO RESET HEARING DATE AND SET A BRIEFING SCHEDULE
ON DEFENDANTS' MOTION FOR DISCOVERY SANCTIONS (ECF No. 241)**

Pursuant to the Federal Rules of Civil Procedure and Local Civil Rule 7, Plaintiffs respectfully request that the Court reset the hearing date and set a briefing schedule on Cox's Motion For Discovery Sanctions And To Preclude Plaintiffs' Use Of MarkMonitor Evidence (ECF No. 241) (the "Motion").

Late last night Cox filed a baseless and confusing motion for sanctions on an issue it has known about for months. Despite raising the issue ages ago, Cox waited until Plaintiffs were knee-deep in summary judgment and Daubert briefing to file the Motion, then requested a briefing and argument schedule that would be the most disruptive possible schedule to Plaintiffs' other filings. Cox's scheduling of this Motion stands in stark contrast to Plaintiffs' substantial efforts to work with Defendants on their personnel schedules for other pre-trial filings and hearings. Plaintiffs' anticipated opposition will aid the Court's review in understanding the issues and take more time to prepare than Cox proposes given the material overlapping deadlines.

Over Plaintiffs' objection, Cox unilaterally set the hearing for August 29 and requested expedited briefing, despite the August 30 deadline for all summary judgment and Daubert motions.

Having spent months manufacturing the issue and preparing a brief with 28 exhibits, Cox proposes to jam Plaintiffs with a mere nine days to respond¹ and a hearing the day before summary judgment and Daubert motions are due.

There is no urgency to Cox's motion whatsoever. Cox's proposed schedule reeks of gamesmanship and appears designed to distract Plaintiffs on the eve of substantial pretrial matters. Though styled as one for discovery sanctions, it is a motion *in limine* to preclude certain evidence. The Court has already set a briefing and hearing schedule for such motions in October and November; Cox simply ignored it.

Plaintiffs' opposition will make clear that there is no factual or legal basis for the requested sanction. Doing so will require time—and clear supporting declarations—especially given the confusing and convoluted presentation in Cox's brief. Plaintiffs' opposition will aid the Court's review in understanding the issues. Preparing the opposition and declarations in the limited time remaining before Plaintiffs' file a material summary judgement motion and Daubert motions concerning each of Cox's five experts will be challenging. Beyond summary judgment and Daubert motions, objections to exhibit lists are due August 29, designations are due September 18, myriad other deadlines are fast approaching, and coordinating declarations during the late August holiday season only complicates matters.

There is simply no pressing reason to expedite this motion and substantial reason not to. Plaintiffs explained as much to Cox's counsel both before and after it filed the motion. Cox ignored Plaintiffs' request for a more appropriate schedule, unilaterally set the hearing date, and flatly rejected Plaintiffs' proposed alternate schedule.

¹ Cox's counsel misrepresented to Your Honor's clerk in an email today that Cox proposed *eleven* days for Plaintiffs' opposition. Cox's own Notice of Hearing (ECF No. 242) demonstrates the falsity of that representation.

Plaintiffs therefore respectfully request that the Court enter an Order setting the following briefing and hearing schedule on Cox's motion:

- Plaintiffs' opposition – Friday, Sept. 13
- Cox reply – Friday, Sept. 20
- Hearing – Friday, Sept. 27

For the Court's convenience, the entire pretrial schedule is set forth below.

A. Pretrial Filings

<i>EVENT</i>	<i>Date</i>
File Rule 26(a)(3)(A)(i) witness disclosures	July 16, 2019
File objections to the other side's Rule 26(a)(3)(A)(i) witness disclosures	July 23, 2019
File Rule 26(a)(3)(A)(iii) exhibit list disclosures	August 13, 2019
Serve (but do not file) proposed written stipulations of uncontested facts	August 15, 2019
File written stipulations of uncontested facts	August 22, 2019
File objections to the other side's Rule 26(a)(3)(A)(iii) exhibit list disclosures	August 29, 2019
File deposition designations under Rules 26(a)(3)(A)(ii), 32(a)(3) & (4), and Local Civil Rule 30(F)	September 18, 2019
File objections to the other side's deposition designations and counter-designations	October 7, 2019
File objections to the other side's counter-designations and any fairness designations	October 22, 2019

B. Summary Judgment and *Daubert* Motions

<i>EVENT</i>	<i>Date</i>
File Summary Judgment Motions and Briefs, and <i>Daubert</i> Motions and Briefs	August 30, 2019
File Summary Judgment Oppositions and <i>Daubert</i> Oppositions	September 24, 2019
File Summary Judgment Replies and <i>Daubert</i> Replies	October 11, 2015
Summary Judgment and <i>Daubert</i> Hearing	October 18, 2019

C. Motions *In Limine*

<i>EVENT</i>	<i>Date</i>
File Motions <i>in limine</i> and Briefs	October 21, 2019
File Motions <i>in limine</i> Oppositions	November 4, 2019
File Motions <i>in limine</i> Replies	November 11, 2019
Motions <i>in limine</i> Hearing	November 15, 2019 (<i>likely to be moved to Nov. 12 with slightly adjusted briefing schedule</i>)

Dated August 15, 2019

Respectfully Submitted,

/s/ Scott A. Zebrak

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